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32127	7590	09/22/2004	EXAMINER	
VERIZON CORPORATE SERVICES GROUP INC. C/O CHRISTIAN R. ANDERSEN 600 HIDDEN RIDGE DRIVE MAILCODE HQEO3H14 IRVING, TX 75038			KLINGER, SCOTT M	
			ART UNIT	PAPER NUMBER
			2153	
DATE MAILED: 09/22/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary

Application No.

09/748,057

Applicant(s)

ELLIOTT, BRIG BARNUM

Examiner

Scott M. Klinger

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE ____ MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on 14 June 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-4, 7-13 and 15-27 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-4, 7-13, and 15-27 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: ____.

DETAILED ACTION

Claims 5, 6, and 14 have been cancelled. Claims 1-4, 7-13, and 15-27 are pending.

Priority

No claim for foreign priority has been made. The effective filing date for the subject matter defined in the pending claims in the application is 22 December 2000.

Response to Applicant

Due to the amendments to the claims, the rejections of claims 1-4 under 35 U.S.C. 102(e) as being anticipated by Bowman-Amuah (U.S. Patent Number 6,606,660) have been withdrawn. Claims 2-4 are newly rejected below.

Note: Applicant's remarks are in **bold** type. Responses to applicant's remarks are indented.

Drosset describes a method and system for providing audio service to a client through a communication network. A user requesting service is validated by the server and the user can request steaming of audio files or play lists from the server. The user can maintain and modify the play list and send play lists to other users. However, the sending of play lists from one user to another does not result in modifying the play list of the user receiving the play list. Drosset only provides that the users can modifying their own play lists. Drosset is silent on modifying a user's play list based on receiving content from a remote network node.

Drosset discloses modifying a user's play list based on receiving content from a remote network node. The user adds a song to the play list, modifying said play list. The song added to the play list is the song being received from a remote network node. Thus, the user is modifying the play list based on receiving content from a remote network node:

“There are many different ways that a user can search for and find music to populate a

playlist according to the present invention. For example, a user may add to a playlist a song that is currently being streamed out to the user. To begin, a user clicks on an icon in order to create new playlist or select an existing one. A window appears at the user interface prompting the user to name the playlist.” (Drosset, col. 7, lines 1-7)

By requiring a user to be validated for accessing the server, Drosset teaches away from the server modifying the user's play list based on information received from a remote node.

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., “*the server modifying the user's play list based on information received from a remote node*”) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Further, the play lists do not include content, but rather are an index to the content such that the server reads the play lists to obtain the referenced audio files, or content from memory system storage.

Although the index does not contain audio files, the contents of the index are references to the audio files.

Thus, Drosset does not teach or suggest a remote network node sending remote network node content and user information for modifying a play list of the user to include a reference to the remote network node content, as presented in Applicant's independent claim 1 and independent claim 15.

As stated above, Drosset does contain a remote network node sending remote network node content and user information for modifying a play list of the user to include a reference to the remote network node content: *Drosset, col. 7, lines 1-7* (see full quote above)

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Pezzillo describes a system for enabling Internet or intranet broadcasting that offers audio and webcast automation. The webcaster or service provider can cause streaming of content to a network receiver identified with a user. When the listener accesses the system, the webcaster can add content e.g., advertising, to the play list that the listener receives. Pezzillo is silent with regard to a remote network node interface for receiving input from a remote network node that identifies remote network node content and identifies a user or listener to receive streaming delivery of the content, as presented in Applicant's independent claims 1, 18 and 24.

Pezzillo does teach receiving identifying a user at a remote network node and allowing the user to choose what they want to hear (identifying remote network node content):

"The system actively profiles the listener by providing the listener with a preferences page, where the listener can choose what they want to hear when they log on and choose other preferences." (Pezzillo, col. 7, lines 1-4)

In Pezzillo, the webcaster, or server providing the streaming content modifies the play list according to the webcaster's input through the webcaster's interface. Thus, Pezzillo teaches away from a remote network node interface for inputting remote network node content and user information for modifying an identified user's play list to include a reference to the remote network node content, as presented in Applicant's claims 1 and 18.

Although the webcaster sets up the play lists, the user chooses which play lists to listen to. The selection of a play list includes sending identification of said play list from the remote network node of the client to the remote network node of the server

Thus, Pezzillo does not teach or suggest a remote network node sending remote network node content and user information for modifying a play list of the user to include a reference to the remote network node content, as recited in Applicant's claims 1 and 18. Nor does Pezzillo teach or suggest a remote network node interface for recording content and user information from the remote network node, as presented in Applicant's independent claim 24.

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In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., "*a remote network node interface for recording content*") are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Pezzillo does teach using a File Transfer Program to input source material into a remote network node. A File Transfer Program provides an interface for inputting said source material:

"Before scheduling for the station can begin, source material must be added to the system. Source material already created, such as RealMedia clips, can be transferred by File Transfer Protocol/File Transfer Program (FTP), or any other appropriate transfer method, into the system Contents Database. Source material can also be captured from various sources directly into the system Contents Database. Scheduling can then begin."
(Pezzillo, col. 5, lines 7-15)

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1, 6, 7, and 15-17 are rejected under 35 U.S.C. 102(e) as being anticipated by Drosset et al. (U.S. Patent Number 6,662,231, hereinafter "Drosset"). Drosset discloses a method and system for subscriber-based audio service over a communication network.

In referring to claim 1,

- Providing remote network node interface instructions for submitting remote network node content:

"The present invention enables a user to create, modify or delete a playlist, where the user selects the audio files or controls the mix of audio files contained within the playlist. A user may begin creation of a playlist by selecting an icon, such as an icon on a graphical user interface or portion of an HTML page, representing a playlist creation function. The user may be then be prompted to select songs to place in the list."

(Drosset, col. 6, lines 60-67)

- Transmitting the remote network node interface instructions to a remote network node; receiving information from the remote network node, via the transmitted interface instructions, the information including remote network node content and identification of a user:

"A user may begin creation of a playlist by selecting an icon, such as an icon on a graphical user interface or portion of an HTML page, representing a playlist creation function. The user may be then be prompted to select songs to place in the list."

(Drosset, col. 6, lines 63-65)

- Modifying a play list associated with the user identified in the information to include a reference to the remote network content, the play list identifying content for streaming delivery to a network receiver associated with the identified user:

"There are many different ways that a user can search for and find music to populate a playlist according to the present invention. For example, a user may add to a playlist a song that is currently being streamed out to the user. To begin, a user clicks on an icon in order to create new playlist or select an existing one. A window appears at the user interface prompting the user to name the playlist." (Drosset, col. 7, lines 1-7)

- Causing streaming of the remote network node content to the network receiver associated with the identified user as part of the content for streaming delivery based on the modified play list:

"The present invention is directed toward a subscriber-based service for providing audio files to a client device connected to a server through a network, such as a wide area network. The server has access to user data and audio data files stored in a memory system, such as a database. A user requesting service from the server is validated to ensure that the user is a subscriber. The user may then request streaming or download of audio data files or customized playlists from the server ... The user may also maintain and modify customized playlists through the server and send playlists to other users." (Drosset, col. 2, lines 38-52)

In referring to claim 7,

- The play list identifies generic, shared content in addition to the remote network node content:

"The present invention enables a user to create, modify or delete a playlist, where the user selects the audio files or controls the mix of audio files contained within the playlist. A user may begin creation of a playlist by selecting an icon, such as an icon on a graphical user interface or portion of an HTML page, representing a playlist creation function. The user may be then be prompted to select songs to place in the list." (Drosset, col. 6, lines 60-67)

In referring to claim 15,

- Play lists associated with different respective users, the play lists identifying content for streaming delivery to network receivers associated with the respective users:

"There are many different ways that a user can search for and find music to populate a playlist according to the present invention. For example, a user may add to a playlist a song that is currently being streamed out to the user. To begin, a user clicks on an icon in order to create new playlist or select an existing one. A window appears at the user interface prompting the user to name the playlist." (Drosset, col. 7, lines 1-7)

A system that allows a user to create a customized playlist inherently implies playlists associated with different users

- Instructions for causing a processor to receive information from a remote network node, the information including received content and identification of one user of the different respective users:

"A user requesting service from the server is validated to ensure that the user is a subscriber. The user may then request streaming or download of audio data files or customized playlists from the server." (Drosset, col. 2, lines 42-46)

A system that sends customized streaming content to a user inherently implies sending the identification of the user along with the content

- Instructions for causing a processor to modify a play list associated with the one user to include a reference to the received content:

Drosset, col. 6, lines 60-67 (quoted above)

Instructions for a processor to modify a playlist is inherent in a system that modifies a playlist

In referring to claim 16,

- A stream generator for streaming content to the one user based on the play list associated with one user.

Drosset, col. 2, lines 42-46 (see full quote above), a stream generator is inherent in a system that generates a stream

In referring to claim 17,

- Causing a processor to transmit interface instructions to the remote network node, the interface instructions for receiving identification of content designated by a content submitter and transmitting the identification to the network server:

"A user may begin creation of a playlist by selecting an icon, such as an icon on a graphical user interface or portion of an HTML page, representing a playlist creation function. The user may be then be prompted to select songs to place in the list." (Drosset, col. 6, lines 63-65)

Claims 1, 9-13, 18-20, and 22-27 are rejected under 35 U.S.C. 102(e) as being anticipated by Pezzillo et al. (U.S. Patent Number 6,434,621, hereinafter "Pezzillo"). Pezzillo discloses an apparatus and method of using the same for Internet and intranet broadcast channel creation and management

In referring to claim 1,

- Providing remote network node interface instructions for submitting remote network node content; transmitting the remote network node interface instructions to a remote network node; receiving information from the remote network node, via the transmitted interface instructions, the information including remote network node content and identification of a user; modifying a play list associated with the user identified in the information to include a reference to the remote network content, the play list identifying content for streaming delivery to a network receiver associated with the identified user:

"When a listener using a Web browser accesses an Internet radio station enabled by the system of the present invention, the playlist transferred over the Internet from the system to the listener's computer contains instructions which tell the player software on the listener's computer what to play. The first entry in the playlist transferred to the listener may be an advertisement, and the second entry accessed by the listener may be one of several live streams." (Pezzillo, col. 13, lines 14-22)

- Causing streaming of the remote network node content to the network receiver associated with the identified user as part of the content for streaming delivery based on the modified play list:

"Yet another aspect of the invention is to integrate streaming audio and video media program files with live broadcast media in multiple webcast channels for Internet and intranet broadcasting."

...

Still another aspect of the invention is to provide unattended, remotely scheduled operation of multiple webcast channels for Internet and intranet broadcasting." (Pezzillo, col. 3, lines 10-15)

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In referring to claim 9,

- Receiving play scheduling information for the content based on the interface instructions; modifying the play list based on the received play scheduling information:
The channels can be run using a program schedule created by the webcaster, or by using the system to automatically determine a program schedule utilizing criteria provided by the webcaster.” (Pezzillo, col. 3, lines 64-67)

In referring to claim 10,

- Receiving play scheduling information comprises receiving a number of times to stream the remote network node content:
In system that uses a program schedule to determine when specific streams will be transmitted, it is inherently implied that the number of times a stream will be played is included in said schedule

In referring to claim 11,

- Receiving play scheduling information comprises receiving a specified time to stream the remote network node content:
“A further aspect of the invention is to utilize time barriers to override a webcast channel's program schedule to force program files to run at particular times.” (Pezzillo, col. 3, lines 24-26)

In referring to claims 12 and 13,

- Receiving play scheduling information comprises receiving a priority for streaming the content; based on the received priority of the streaming the remote network node content, terminating streaming of currently streaming content and initiating streaming of the remote network node content

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"A still further aspect of the invention is to utilize live barriers to override a webcast channel's program schedule to force a live events to broadcast at a particular times."

(Pezzillo, col. 3, lines 27-29)

In referring to claim 18,

- Receive information from a remote network node, the information including identified content and identification of a specific user:

Pezzillo, col. 3, lines 10-15 (see full quote above)

- Modify a play list associated with the specific user to include a reference to the content, the play list identified content for streaming delivery to a network receiver associated with the specific user:

Pezzillo, col. 13, lines 14-22 (see full quote above)

In referring to claim 19,

- Instructions for causing the processor to stream the identified content to the network receiver associated with the specific user as part of the content for streaming delivery in accordance with the play list:

"Selecting HTML tools button 608 gives the user access to a HTML module for synchronizing HTML with the audio. Selecting playlists button 610 gives the user access to the playlist system, which gives the contents of the show now playing, and manages the music library and integrates compliance checking." (Pezzillo, col. 12, lines 43-48)

In referring to claim 20,

- The play list includes at least one reference to content not designated for delivery to a specified user:

Pezzillo, col. 12, lines 43-48 (quoted above)

The show now playing is a broadcast that is not designated for delivery to a specific user

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In referring to claim 22,

- Receive play scheduling information for the identified content; modify the play list based on the received play scheduling information:

Pezzillo, col. 13, lines 14-22 (quoted above)

In referring to claim 23,

- Provide interface instructions for submitting content, transmit the interface instructions to the remote network node:

"An Inventory feature provides access to and information about all programming that can be scheduled in the system. Within Inventory is a Contents Database, which is a database of show codes and of individual show files or show records that add individual program entries. Different transfer methods can be used to modify or add to the Contents Database." (Pezzillo, col. 6, lines 20-25)

In referring to claim 24,

- Receive input identifying content; receive input identifying a user to receive streaming delivery of the identified content; transmitting the received input identifying content and the received input identifying the user to a network server.

"The user interface to the system is a standard Web browser, such as Netscape Navigator or Microsoft® Internet Explorer. The current system will run under the Windows NTTM or UNIX®/Linux operating systems. The listener accesses the stations from a computer utilizing a standard Web browser and loaded with player software that can handle the streaming media formats." (Pezzillo, col. 3, line 67 – col. 4, line 6)

"Referring now to FIG. 12, the program to generate the graphical user interface that displays the program schedule as depicted in FIG. 3 is called in step 1200." (Pezzillo, col. 17, lines 53-56)

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In referring to claim 25,

- Causing a processor to receive input from the remote network node identifying play scheduling information for the identified content.

"If step 1312 determines that there are no more shows in the list of shows, then in step 1314 the graphic user interface is updated to display the list of compliant shows. Control then returns to the add an entry program, where the user can now select a compliant show from the list of compliant shows to add to the program schedule." (Pezzillo, col. 18, lines 44-49)

In referring to claim 26,

- A graphical interface defined by markup language instructions:

Pezzillo, col. 12, lines 43-48 (quoted above)

In referring to claim 27,

- A processor to transmit the identified content:

A computer system that transmits streaming content inherently implies a processor to transmit said content

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2-4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Drosset in view of Bowman-Amuah (U.S. Patent Number 6,606,660, hereinafter "Bowman-Amuah").

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In referring to claim 2, although Drosset shows substantial features of the claimed invention, Drosset does not show the content comprises video data. Nonetheless this feature is well known in the art and would have been an obvious modification to the system disclosed by Drosset as evidenced by Bowman-Amuah.

In analogous art, Bowman-Amuah discloses stream-based communication in a communication services patterns environment. Bowman-Amuah shows:

- Causing streaming of the content to a network receiver associated with the identified user:

"FIG. 20 depicts Streaming, in which a real-time data stream is transferred" (Bowman-Amuah, col. 3, lines 18-19)

- The content comprises at least one of audio data and video data:

"Audio/Video services allow nodes to interact with multimedia data streams. These services may be implemented as audio-only, video-only, or combined audio/video" (Bowman-Amuah, col. 62, lines 7-9)

Given these teachings, a person of ordinary skill in the art would have readily recognized the desirability and advantages of modifying the system of Drosset so as to allow the system to provide video data, such as taught by Bowman-Amuah, in order to entice more users to use the system by providing more robust content.

In referring to claims 3 and 4, Drosset in view of Bowman-Amuah shows,

- The audio data comprises a voice mail message:

"... an Internet telephony product can accept voice input into a workstation, translate it into an IP data stream, and route it through the Internet to a destination workstation, where the data is translated back into audio. Desktop Voice Mail--Various products enable users to manage voice mail messages using a desktop computer." (Bowman-Amuah, col. 60, lines 22-29)

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Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Drosset. Although Drosset shows substantial features of the claimed invention, including the method of claim 6 (see 102 rejection above), Drosset does not explicitly show determining whether a submitter of the content is authorized to submit content. Nonetheless this feature is well known in the art and would have been obvious in the system disclosed by Drosset. Drosset discloses a method and system for subscriber-based audio service over a communication network.

Although Drosset does not explicitly state that only authorized users would be allowed to submit content to the database a person of ordinary skill in the art would have readily recognized the desirability and advantages of restricting access to the system. A person of ordinary skill in the art would have readily recognized the desirability and advantages of implementing the system of Drosset so as to determine if a submitter of content is authorized to submit content, in order to prevent listeners from illegally adding copyrighted content.

Claim 21 is rejected under 35 U.S.C. 103(a) as being unpatentable over Pezzillo. Although Pezzillo shows substantial features of the claimed invention, including the method of claim 18 (see 102 rejection above), Pezzillo does not explicitly show determining whether a submitter of the content is authorized to submit content. Nonetheless this feature is well known in the art and would have been obvious in the system disclosed by Pezzillo. Pezzillo discloses an inventory feature to add content to the database of audio files: *Pezzillo, col. 6, lines 20-25 (quoted above)*

Although Pezzillo does not explicitly state that only authorized users would be allowed to submit content to the database a person of ordinary skill in the art would have readily recognized the desirability and advantages of restricting access to the system. Figure 2 shows that the studios (200 and 216) are separate from the listeners (248), and it is implied that only the studios would be able to access and use the Inventory feature of Pezzillo. Given these teachings, a person of ordinary skill in the art would have readily recognized the desirability and advantages of implementing the system of Pezzillo so as to determine if a submitter of content is authorized to submit content, in order to prevent listeners from illegally adding copyrighted content.

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Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Scott M. Klinger whose telephone number is (703) 305-8285. The examiner can normally be reached on M-F 7:00am - 3:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Glenn Burgess can be reached on (703) 305-4792. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Scott M. Klinger
Examiner
Art Unit 2153

smk


FRANTZ B. JEAN
PRIMARY EXAMINER